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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION**

LISA LIBERI, et al,

Plaintiffs,

vs.

ORLY TAITZ, et al,

Defendants.

CIVIL ACTION NUMBER:

8:11-cv-00485-AG (AJW)

**PLAINTIFFS MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF THEIR OPPOSITION
TO DEFENDANTS ANTI-SLAPP
MOTION AND MOTION TO
DISMISS PURSUANT TO 12(b)(1)
and 12(b)(6)**

Date of Hearing: June 13, 2011
Time of Hearing: 10:00 a.m.
Location: Courtroom 10D

**PLAINTIFFS MEMORANDUM OF POINTS and AUTHORITIES
IN SUPPORT OF THEIR OPPOSITION TO DEFENDANTS
ANTI-SLAPP AND MOTION TO DISMISS**

I. FACTS:

1. On May 4, 2009, Plaintiffs, Philip J. Berg, Esquire, [hereinafter at times "Berg"] Lisa Ostella [hereinafter at times "Ostella"] and Lisa Liberi [hereinafter at times "Liberi"] filed suit against Defendants Orly Taitz [hereinafter

1 at times “Taitz”], Defend our Freedoms Foundations, Inc. [hereinafter at times
2 “DOFF”]; Neil Sankey [hereinafter at times “Sankey”]; Sankey Investigations, Inc.
3 [hereinafter at times “Sankey Inv.”]; and The Sankey Firm, Inc. [“hereinafter at
4 times “Sankey Firm”] for amongst other things, Invasion of Privacy; Invasion of
5 One’s Right to Solitude; Placing One in a False Light Before the Public; Cyber-
6 stalking; Stalking; Cyber-bullying; Harassment; and violation of *Cal. Civ. P.* 1798,
7 et seq. for the illegal background checks, illegal access to Plaintiffs credit reports,
8 contacting and harassing Plaintiffs friends and family and for the illegal
9 distribution of Liberi and Ostella’s full Social Security number, date of birth,
10 mother’s maiden name, maiden names, place of birth, spouses name, spouses
11 Social Security number, spouses date of birth and other extremely private
12 information. Said suit was originally filed in the U.S. District Court, Eastern
13 District of Pennsylvania and recently transferred to this Court.

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19 2. Defendant Taitz has also filed approximately six (6) Motions, if **not**
20 more, Motions to Dismiss pursuant to *Fed. R. Civ. P.* 12, all of which were denied,
21 as documented by the Court’s Docket. Also, as this Court is aware, a party is only
22 entitled to file a Motion to Dismiss pursuant to the *Fed. R. Civ. Proc.* 12 on one [1]
23 occasion and anything **not** raised in the initial Motion is deemed waived, thus
24 Taitz’s Motions were incompliant with the *Fed. R. Civ. Proc.*’s. Taitz asserted the
25 *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009), and *Bell*
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1 Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929
2 (2007) cases as a basis for dismissal, however, the Pennsylvania Federal Court
3 found Plaintiffs Complaint compliant with the pleading requirements outlined in
4 Iqbal and Twombly and denied Taitz's Motions to Dismiss.
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6 3. Plaintiffs incorporate herein by reference Taitz's Anti-SLAPP Motion
7 and Motions to Dismiss appearing as Docket Entry numbers ["Dkt no.'s"] 35 filed
8 May 28, 2009; 48 filed May 28, 2009; 53 filed June 9, 2009; 59 filed June 11,
9 2009; 61 filed June 16, 2009; 93 filed August 3, 2009; 165 filed February 1, 2011;
10 and 178 filed April 25, 2011.
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12 4. Plaintiffs incorporate herein by reference Plaintiffs Oppositions to
13 Taitz's Motions to Dismiss pursuant to the Anti-SLAPP statute and *Fed. R. Civ. P.*
14 12(b)(1) and 12(b)(6) as if fully set forth here in length, Docket Numbers 49 filed
15 June 8, 2009; 54 filed June 11, 2009; 63 filed June 18, 2009; 64 filed June 21,
16 2009; and Plaintiffs Response to the Court's Order to show cause appearing as Dkt
17 no's 106 filed August 26, 2009; 107 filed August 27, 2009; and 110 filed
18 September 29, 2009.
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20 5. Taitz has now filed, on behalf of herself and DOFF, another Anti-
21 SLAPP Motion and Motion to Dismiss pursuant to *Fed. R. Civ. P.* 12(b)(1) and
22 12(b)(6), which is completely improper as Taitz and DOFF waived their
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1 affirmative defenses and cannot raise them now; full diversity exists; and Plaintiffs
2 have a pending Motion for Leave to Amend their Complaint.

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4 6. For the reasons stated herein, Taitz's Motion must be Denied and
5 Plaintiffs should be Granted Leave to File their First Amended Complaint.

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7 **II. CALIFORNIA'S ANTI-SLAPP STATUTE, CAL. CIV. CODE**
8 **§425.16 DOES NOT APPLY TO THE WITHIN ACTION.**

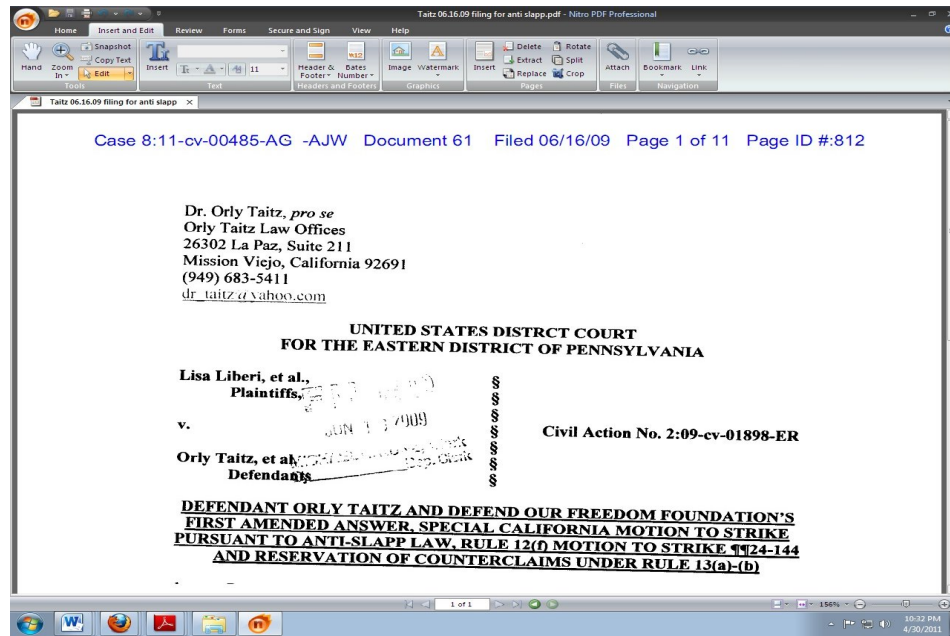
9 7. Plaintiffs incorporate by reference their Complaint, Docket Entry No.
10 1 filed May 4, 2009, as if fully set forth here at length.

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12 8. Plaintiffs also incorporate by reference the preceding paragraphs as
13 if fully set forth here at length.

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15 9. Taitz in her Response to Plaintiffs Application for an Ex Parte Order
16 stated Plaintiffs committed fraud upon the Court by stating Taitz had filed a
17 previous Anti-SLAPP Motion. Taitz states she has never filed an Anti-SLAPP
18 motion. [See Taitz filing of April 30, 2011, Docket No. 182, p. 2, ¶5].

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20 10. Taitz statement is untrue. To set the record straight, Taitz filed an
21 Anti-SLAPP motion, almost identical to the one she filed April 25, 2011, on June
22 16, 2009 appearing as Docket No. 61. See the screen shot below:

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11. A cause of action is subject to being stricken under the Anti-SLAPP statute when two [2] conditions are met. The cause of action must (1) arise from protected speech or petitioning; and (2) lack even minimal merit. *See Navellier v. Sletten* (2002) 29 Cal.4th 82, 89 [124 Cal. Rptr. 2d 530, 52 P.3d 703]. *See also Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 192 [25 Cal. Rptr. 3d 298, 106 P.3d 958]. Our Courts determine whether the two [2] conditions have been met by using a two-step inquiry that involves shifting burdens.

12. The first prong must determine ‘whether the Defendant has made a threshold showing that the challenged cause of action’ arises from an act in furtherance of the right of petition or free speech in connection with a public issue. Taitz and DOFF are unable to over-come this first prong. Taitz’s repeated publications on her website, on the Internet, on videos and on radio programs about

1 Plaintiffs, most of which were false statements, were **not** of public importance or
2 public issues.

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4 13. Liberi and Ostella are **not** public figures, they are **not** in the public
5 eye and their lives are **not** newsworthy and nothing in Ostella and Liberi's lives are
6 a public issue. Despite this, Taitz has continued Slandering, Libeling and
7 Defaming Liberi, Ostella and Berg on radio shows, TV shows and publications on
8 her website and the internet which is **not** tolerated by the laws of our State and/or
9 our United States Constitution, and has caused permanent damage to the Plaintiffs.
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12 14. As demonstrated by all the Exhibits filed by Plaintiffs, Taitz
13 continued publishing pictures of Liberi, Liberi and Ostella's private data, including
14 but **not** limited to full Social Security number, date of birth, place of birth and
15 mother's maiden name, spouses names and private data, etc. Taitz and the other
16 Defendants conducted illegal background checks and illegal access to Plaintiffs
17 credit reports; Taitz repeatedly published false statements about the Plaintiffs,
18 including but **not** limited to "Liberi is a career document forger; Ostella and Liberi
19 stole monies from Taitz non-profit foundation, DOFF (Plaintiffs have not stolen
20 any monies from Taitz or DOFF. Regardless, Taitz claims DOFF is a non-profit,
21 however, Plaintiffs cannot locate DOFF's registration as a non-profit
22 organization); Liberi was convicted of Identity Theft, Forgery of Documents,
23 Falsifying Police and Credit Reports, real estate fraud, Ostella forged Taitz's
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1 name/signature, that Ostella had a criminal record, Liberi handled Berg's
2 fundraising, Liberi had access to Berg's donators credit cards, Liberi's husband
3 was on parole, Liberi and her husband had two (2) credit card accounts set up on
4 Berg's website, that Ostella's husband was benefiting from the monies stolen by
5 Ostella, Liberi, Ostella and Berg were harassing, slandering, defaming Taitz, etc.,
6 all the time knowing the information was false. Taitz publicized all these false
7 statements repeatedly with malice.
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11 15. Taitz continued publishing in excess of a hundred times, that Liberi
12 had a criminal record and published a "supposed" rap sheet or court print-out, the
13 same documents Taitz stated on numerous occasions was that of Plaintiff Lisa
14 Ostella. Additionally, Taitz filed numerous false law enforcement reports claiming
15 Liberi and Ostella were the same person, that Liberi and Ostella stole monies from
16 Taitz's foundation, that Liberi and Ostella "hijacked" Taitz's website, etc.
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19 16. The repeated publication and publicizing of Taitz false statements,
20 and information pertaining to Liberi, Ostella and Berg evidences malice. *See*
21 *Fisher v. Larsen*, (1982) 138 Cal. App. 3d 627, 640 [188 Cal. Rptr. 216]; *Rancho*
22 *La Costa, Inc. v. Superior Court*, (1980) 106 Cal. App. 3d 646, 667 [165 Cal. Rptr.
23 347], *Evans v. Unkow*, (1995) 38 Cal. App. 4th 1490 [45 Cal.Rptr.2d 624] quoting
24 *Fisher v. Larsen*, (1982) 138 Cal.App.3d 627, 640, [188 Cal. Rptr. 216]; and
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1 Reader's Digest Assn. v. Superior Court, (1984) 37 Cal.3d 244, 258, [208 Cal.
2 Rptr. 137, 690 P.2d 610].

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4 17. False allegations, accusations and reporting of the false information
5 are not Free Speech protected by the First Amendment to the United States
6 Constitution. See Beauharnais v. Illinois, 343 U.S. 250, 72 S. Ct. 725, 96 L. Ed.
7 919 (1952), (the Court held that libelous speech is not protected by the U.S.
8 Constitution). Plaintiffs herein are not public figures, however, even if they were,
9 there is absolutely no question that Taitz's false allegations were done with Malice
10 and therefore, are not protected under the First Amendment of the U.S.
11 Constitution or California's Anti-SLAPP statute. See New York Times v. Sullivan,
12 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964). See also Dunn & Bradstreet,
13 Inc. v. Greenmoss Builders, (1985) 472 U.S. 749, 762 (plur. opn. of Powell, J.)
14 [stating that when speech "concerns no public issue" and is "wholly false and
15 clearly damaging," it "warrants no special protection" under the First Amendment].
16 It is settled in California that not all speech or petition activity is constitutionally
17 protected. See Flatley v. Mauro, (2006) 39 Cal.4th 299, 313; Aguilar v. Avis Rent A
18 Car System, Inc., supra, (1999) 21 Cal.4th 121 [87 Cal.Rptr.2d 132; 980 P.2d
19 846][87 Cal. Rptr.2d 132; 980 P.2d 864 at p. 134 ["the right to free speech is not
20 absolute"]. Our California Courts have stated, "Allowing sanctions is consistent
21 with the text of the state constitutional provision, which makes anyone who
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1 "abuse[s]" the right of freedom of speech "responsible" for the misconduct." (Cal.
2 Const., art. I, § 2, subd. (a); *See Brown v. Kelly Broadcasting Co.*, (1989) 48
3 Cal.3d 711, 746.
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5 18. The second prong is whether the Plaintiffs have demonstrated a
6 probability of prevailing on the claim. Plaintiffs agree they must Amend their
7 Complaint to bring it in compliance with the California Laws. However, there is
8 no question whether Plaintiffs will prevail on their claims. Defendant Taitz's
9 statements were not free speech but instead were false personal attacks on
10 Plaintiffs; a violation of Plaintiffs privacy rights; and constitute Cyber-stalking,
11 Cyber-harassment and Cyber-bullying; Slander, Libel, Defamation; Harassment
12 and other violations. The law is that there must be a public interest in the specific
13 speech or conduct alleged in the complaint: "The fact that "a broad and
14 amorphous public interest" can be connected to a specific dispute is not sufficient
15 to meet the statutory requirements' of the Anti-SLAPP statute.". *See World*
16 *Financial Group, Inc. v. HBW Ins. & Financial Services, Inc.*, (2009) 172
17 Cal.App.4th 1561, 1570 [92 Cal. Rptr. 3d 227]; *See also Episcopal Church Cases*,
18 (2009) 45 Cal.4th 467, 477 [87 Cal. Rptr. 3d 275, 198 P.3d 66].
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25 19. Taitz continued publishing that Berg is employing a convicted
26 "document forger and thief" and foreign affidavits were filed in one of Berg's
27 cases which was handled by a "career document forger". Taitz further claims that
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1 Liberi fundraises for Berg and has access to credit cards, which is harmful to
2 Berg's donators. [Taitz Motion, pp. 5-12]. Liberi has never been convicted of
3 forging documents or document forgery. Liberi is a paralegal; she researches the
4 laws and drafts briefs pertaining to a legal issue. Liberi does **not** fundraise; Liberi
5 does **not** have anything to do with Berg's financial accounts. Further, Taitz and
6 the other Defendants did **not** have authorizations from the Plaintiffs, nor any type
7 of permissible purpose or legal basis to conduct background checks, obtaining
8 Plaintiffs private data and/or credit reports. Taitz and the other Defendants did **not**
9 have any type of permissible purpose and violated our very laws by publicizing
10 Liberi's full Social Security number, date of birth, place of birth, pictures, maiden
11 name, mother's maiden name, father's name, home address and telephone number,
12 Liberi's husband's name, date of birth and Social Security number, and the private
13 identifying information of Ostella, and her husband. Taitz continues claiming she
14 is a "whistleblower", which is **not** true. Whistleblowers report on actual violations
15 and/or crimes, they do **not** create them based on false information, as Taitz has
16 done.
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23 20. Taitz continues claiming that Liberi and Berg filed the case in
24 Pennsylvania claiming Liberi was an innocent woman and resided in Pennsylvania
25 based upon Taitz's disclosure of Liberi's "criminal record". This again is
26 completely false. First, Taitz has **not** disclosed any "criminal record" of Liberi's.
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1 Taitz has been publishing and republishing a print-out obtained from an unknown
2 place. This same print-out has been altered several times by the Defendants in
3 their claims about Liberi and this same print-out that Taitz claimed was the record
4 of Plaintiff Ostella. Liberi has never disclosed her residency in the Court
5 pleadings; however, Taitz has published Liberi's home address and telephone
6 number all over the Internet. This lawsuit was filed based on the harassment,
7 falsified stories, falsified allegations, and the publication of Plaintiffs private data,
8 etc. by the Defendants, not for the reasons Taitz would have you believe.

12 21. Plaintiffs have clearly demonstrated a probability of prevailing on
13 their claims for Invasion of Privacy; Slander, Libel, Defamation; Cyber-stalking,
14 Cyber-bullying, Cyber-harassment; Appropriation of one's name and like;
15 harassment; and their other causes of action.

18 22. In the words of the Supreme Court, Plaintiff needs to show only a
19 "minimum level of legal sufficiency and triability." Linder v. Thrifty Oil Co.,
20 (2000) 23 Cal.4th 429, 438, fn. 5 [97 Cal. Rptr. 2d 179, 2 P.3d 27].) In the words
21 of other Courts, Plaintiff needs to show only a case of "minimal merit." Peregrine
22 Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP, (2005) 133
23 Cal.App.4th 658, 675 [35 Cal. Rptr. 3d 31], quoting Navellier v. Sletten, (2002) 29
24 Cal.4th 82, 95, fn. 11 [124 Cal. Rptr. 2d 530, 52 P.3d 703].

23. For the reasons stated herein, Taitz and DOFF's Anti-SLAPP Motion and *Fed. R. Civ. P.* 12(b)(1) and 12(b)(6) must be Denied. Plaintiffs are also seeking Leave to File their First Amended Complaint.

III. THIS COURT HAS SUBJECT-MATTER JURISDICTION and PLAINTIFFS HAVE PLEAD CAUSES WHICH RELIEF CAN BE GRANTED:

24. Plaintiffs incorporate by reference their Complaint, Docket Entry No. 1 filed May 4, 2009, as if fully set forth here at length.

25. Plaintiffs also incorporate by reference the preceding paragraphs as if fully set forth here at length.

A. Taitz and DOFF's Fed. R. Civ. P. 12(b)(1) Claims:

26. A Rule 12(b)(1) challenge to subject matter jurisdiction can be "facial," in which case the Court assumes the Plaintiff's factual allegations to be true and draws all reasonable inferences in its favor. *Doe v. See*, 557 F.3d 1066, 1073 (9th Cir. 2009); *Castaneda v. United States*, 546 F.3d 682, 684 n. 1 (9th Cir. 2008). Or, the motion may be a "factual" or "speaking" motion, where the movant may submit materials outside the pleadings to support its motion. In that case, "[i]t then becomes necessary for the party opposing the motion to present affidavits or any other evidence necessary to satisfy its burden of establishing that the court, in fact, possesses subject matter jurisdiction." *Colwell v. Dep't of*

1 *Health and Human Servs.*, 558 F.3d 1112, 1121 (9th Cir. 2009) (quoting *St. Clair*
2 *v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989)).

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4 27. Taitz claims this Court lacks subject matter jurisdiction based on
5 Plaintiffs filing of Diversity jurisdiction. Taitz claims Plaintiffs have **not** satisfied
6 the Diversity requirement by providing her with proof of Liberi's home address.
7 [Taitz Motion, pp. 13-17], and that Judge Robreno Ordered Liberi and Berg to file
8 Liberi's Driver's License [Taitz Motion p. 16]. This is ludicrous. Judge Robreno
9 has **never** ordered Liberi to file her Driver's License with the Court. Liberi did
10 provide her address information to Judge Robreno on August 7, 2009 in Open
11 Court as well as in writing "under Seal". Taitz has published Liberi's home
12 address numerous times, for protection reasons Liberi has **not** provided her home
13 address in Court pleadings due to the continued harassment, cyber-stalking, cyber-
14 harassment, cyber-bullying and Taitz continued inciting against the Plaintiffs. *See*
15 Plaintiffs response to the Court's Order to Show Cause appearing as Docket Entry
16 No.'s 106 filed August 26, 2009; 107 filed August 27, 2009; and 110 filed
17 September 29, 2009; and Plaintiffs Opposition and Affidavits of K. Strebel, Evelyn
18 Adams, Shirley Waddell, Lisa Ostella appearing as Docket Entry No. 144 filed
19 September 14, 2010; and Plaintiffs Request for Sanctions, Affidavits of Lisa
20 Ostella, K. Strebel, Shirley Waddell, Philip J. Berg and the verification of Lisa
21 Liberi appearing as Docket Entry No. 146 filed October 7, 2010.
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1 28. Taitz filed Liberi's home address in this Court's Docket on July 29,
2 2010 appearing as Docket Entry No. 136, in part two 136-1, page 17, ¶4.

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4 29. Taitz does **not** have any valid reason to access Liberi's Driver's
5 License as she is demanding [Taitz Motion, p. 16]. Taitz will publish Liberi's
6 Driver's License on the Internet and all over the World Wide Web as she has done
7 with Liberi and Ostella's full Social Security number, date of birth, place of birth,
8 home address, father's name, mother's maiden name, and other private confidential
9 information, which Taitz illegally obtained. As demonstrated by Taitz filing, Dkt
10 No. 136-1, p. 17, ¶4, Taitz was already fully aware of where Liberi resides. Taitz
11 is defrauding this Court by her continued attempts claiming Liberi resides in
12 California. Further, Liberi showed Judge Robreno her Driver's License, Social
13 Security card and Birth Certificate on August 7, 2009 to prove Liberi did **not**
14 reside in the State of California. In addition, this Court should have documents
15 provided to Judge Robreno "under Seal" with Liberi's home address.

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17 30. Liberi will **not** provide her Driver's License to Taitz for the reasons
18 mentioned above and for the reason Liberi is concerned Taitz attempted to hire a
19 dangerous man to harm Plaintiff, her family and Plaintiff Ostella and her family.
20 Ironically, this person, Ruben Nieto resides in Albuquerque, NM forty-five [45]
21 minutes from Liberi's home and attempted to get paid by Taitz on two (2) separate
22 occasions in consecutive requests from PayPal totaling Twenty-Five Thousand
23 dollars.

1 [\$25,000] Dollars. As this Court is aware, any payments over Ten Thousand
2 [\$10,000] Dollars are reported pursuant to the Patriot Act. Liberi will be happy to
3 show her Driver's License to the Court in Camera, if the Court feels it necessary.
4 Also, during this time, Taitz and her Assistant, Charles Edward Lincoln, III drove
5 around New Jersey where Ostella and her family reside and her children attend
6 school, this was after Taitz threatened to have Ostella's children professionally
7 kidnapped. As a result, Ostella and her family sold their home to an Investor, at a
8 loss, out of fear of having people view their home while they were there, and
9 moved to protect their family from Taitz and her supporters.
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13 31. Further, Taitz published on her website several times that a report she
14 filed against Ostella and Liberi was forwarded to New Mexico as that is where
15 Liberi resides. See Taitz post on her website at
16 <http://www.orlytaitzesq.com/?p=1346> where Taitz states that Theresa Standford of
17 the Orange County Sheriff's Department sent Taitz's criminal report against
18 Ostella and Liberi to the Santa Fe Police Department where Liberi resides. See
19 also Taitz's post, **"More on Lisa Liberi, contact her probation officer in Santa**
20 **Fe New Mexico 505-827-8627. She is not allowed to be anywhere near other**
21 **people's credit cards. By Orlytaitz April 17, 2009"** at
22 [http://216.221.102.26/blogger/post/More-on-Lisa-Liberi-contact-her-probation-](http://216.221.102.26/blogger/post/More-on-Lisa-Liberi-contact-her-probation-officer-in-Santa-Fe-New-Mexico-505-827-8627-She-is-not-allowed-to-be)
23 [officer-in-Santa-Fe-New-Mexico-505-827-8627-She-is-not-allowed-to-be](http://216.221.102.26/blogger/post/More-on-Lisa-Liberi-contact-her-probation-officer-in-Santa-Fe-New-Mexico-505-827-8627-She-is-not-allowed-to-be)
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1 [anywhere-near-other-peoples-credit-cards.aspx](http://www.OnlyTaitzesq.com/?p=36). Taitz post “**Follow up on Lisa**
2 **Liberi, paralegal to Phil Berg**” at <http://www.OnlyTaitzesq.com/?p=36> Taitz states
3
4 that Liberi’s address in New Mexico can be verified with the probation officer
5 Joanne Martinez fax 505-476-2368, phone 505-827-8627; “**I need two articles**
6 **and update on Lisa Liberi**” at <http://www.OnlyTaitzesq.com/?p=807> Taitz states
7
8 Liberi resides in New Mexico and summonses all her supporters and readers to
9 report Liberi to the Santa Fe Probation Department, and Taitz gives the number;
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11 “**Information update on both Liberi and Obama**” at
12 <http://www.OnlyTaitzesq.com/?p=834> Taitz states Liberi resides in New Mexico and
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14 summonses her readers and supporters to contact the Santa Fe Probation Office
15 and gives the number; “**I need to get more answers**” at
16 <http://www.OnlyTaitzesq.com/?p=978>. Taitz again tells her readers Liberi resides in
17
18 New Mexico, there are hundreds of more posts by Taitz regarding Liberi and
19 where she resides. See these posts and the others filed in Plaintiffs Response to the
20 Court’s Order to Show Cause appearing as Docket Entry No.’s 106 filed August
21 26, 2009; 107 filed August 27, 2009; and 110 filed September 29, 2009; and
22 Plaintiffs Opposition and Affidavits of K. Strebel, Evelyn Adams, Shirley
23 Waddell, Lisa Ostella appearing as Docket Entry No. 144 filed September 14,
24 2010; and Plaintiffs Request for Sanctions, Affidavits of Lisa Ostella, K. Strebel,
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1 Shirley Waddell, Philip J. Berg and the Verification of Lisa Liberi appearing as
2 Docket Entry No. 146 filed October 7, 2010.

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4 32. Taitz is well aware of Liberi's residence and therefore her Motion
5 fails.

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7 **B. Taitz and DOFF's Fed. R. Civ. P. 12(b)(6) Claims:**

8 33. Dismissal under *Fed. R. Civ. P. 12(b)(6)* is appropriate only where the
9 complaint lacks a cognizable legal theory or sufficient facts to support a cognizable
10 legal theory." *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th
11 Cir. 2008). For purposes of a Motion to Dismiss, the Plaintiff's allegations are
12 taken as true, and the court must construe the complaint in the light most favorable
13 to the Plaintiffs. *Jenkins v. McKeithen*, 395 U.S. 411, 421, 89 S.Ct. 1843, 23
14 L.Ed.2d 404 (1969). "To survive a motion to dismiss, a complaint must contain
15 sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible
16 on its face.' A claim has facial plausibility when the Plaintiff pleads factual
17 content that allows the court to draw the reasonable inference that the Defendant is
18 liable for the misconduct alleged." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949, 173
19 L.Ed.2d 868 (2009), *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 570, 127 S.Ct.
20 1955, 167 L.Ed.2d 929 (2007). Leave to Amend must be Granted unless it is clear
21 that the complaint's deficiencies cannot be cured by amendment. *Lucas v. Dep't of*
22 *Corr.*, 66 F.3d 245, 248 (9th Cir.1995).

1 34. Taitz first raises the issue of “Count 1”; Plaintiffs assume she means
2 Plaintiffs First Cause of Action. Taitz claims Plaintiffs did **not** raise viable issues
3 under the First and Fourteenth Amendment to the U.S. Constitution and *Cal. Civ.*
4 *Code* §1798.81 [Taitz’s Motion, p. 17, ll. 15-28, pp. 18-20, ll. 1-28]. Taitz states
5 that Plaintiffs claim a violation as a result of Taitz publishing a report by Sankey
6 “showing Liberi’s criminal record” [Taitz Motion, p. 17, ll. 15-28]. This is a
7 complete fraud upon the Court by Taitz and a purposeful false recitation of
8 Plaintiffs First Cause of Action.
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10 35. Plaintiffs clearly claim the violation of privacy was Taitz and the
11 other Defendants illegal access and distribution of Liberi and Ostella’s full Social
12 Security number, date of birth, place of birth, mother’s maiden name, father’s
13 name, address and other private data; as well as Taitz slander, libel and defamation
14 falsely accusing Liberi of being convicted of “identity theft”, “real estate fraud”,
15 altering/forging Police and Credit Reports”; having 46, 80, 100, 200 criminal
16 counts against her; having a current criminal case pending against her, and many
17 other false statements about Liberi, Ostella, Berg and invasion of their privacy.
18 Plaintiffs cite to *Cal. Civ. Code* §1798.81.5(c) which has to do with a business that
19 discloses personal information...pursuant to a contract with a nonaffiliated third
20 party and the requirement of a contract that the third party implement and maintain
21 confidentiality of the private data. This is far different than Taitz’s claim of *Cal.*
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1 *Civ. Code* §1798.81. See Plaintiffs Complaint, p. 62, ¶¶ 144-157. The invasion of
2 privacy by Taitz and DOFF, as plead, are also in violation of *Cal. Civ. Code* §§
3 1798.84 and 1798.53. See Witriol v. LexisNexis Group, (N.D.Cal., Feb. 10, 2006,
4 No. C05-02392) 2006 U.S.Dist. Lexis 26670.

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6 36. Taitz next refers to Plaintiffs Second Cause of Action. Taitz contends
7 that this cause fails as truth is a true defense to slander and Taitz published Liberi's
8 criminal convictions, and states Plaintiffs failed to provide any evidence [Taitz
9 Motion p. 24, ll. 14-28; p. 25, ll. 1-28]. A complaint is only supposed to put the
10 Defendants on notice as to what they allegedly did wrong, notice pleading. See
11 *Fed. R. Civ. P.* 8. Plaintiffs have filed hundreds of pages of Taitz's posts
12 substantiating their causes of actions. If the allegations are disputed the issues of
13 proof are diverted to Trial, **not** in the initial stages of a lawsuit. Taitz again
14 misleads this Court. As clearly plead in Plaintiffs Complaint, Liberi claims the
15 Libel, Slander and Defamation pertained to Taitz false statements that Liberi had a
16 criminal record going back to 1990; Liberi had convictions of amongst other
17 things, identity theft, falsification of police reports, falsification of credit reports,
18 falsification of documents, claiming Lisa Liberi and Lisa Ostella were one and the
19 same, falsely inferring and stating Liberi murdered her sister, falsely claiming
20 Liberi and Ostella were diverting funds from Taitz's PayPal account; falsely
21 claiming Liberi and Ostella were working together; falsely claiming Liberi was a
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1 “career forger”; falsely accusing Liberi of being convicted of numerous counts of
2 forgery; falsely claiming Liberi was diverting funds from Berg and the Law
3 Offices of Philip J. Berg; falsely claiming Liberi was posting on blogs under
4 aliases; falsely claiming Liberi was committing crimes, falsely claiming Liberi,
5 Ostella and Berg were “trashing Taitz”, falsely claiming Liberi had to pay Twenty-
6 One Thousand [\$21,000] Dollars per month in restitution, falsely claiming Liberi
7 was convicted of amongst other things, identity theft, falsifying police reports,
8 falsifying credit reports, forging documents, etc. *See* Plaintiffs Complaint on p. 66,
9 ¶¶ 158-166.

13 37. Taitz then claims that the allegations regarding Ostella were all true,
14 that Taitz provided truthful information. The fact is, Taitz falsely accused Ostella
15 of stealing from her; “hijacking” her (Taitz’s website); of having a criminal record,
16 and many other things. Taitz then misquotes Ostella’s testimony during the
17 December 20, 2010 Restraining Order Hearing. Ostella has never stolen anything
18 from Taitz, never diverted anything from Taitz. For protection purposes, Ostella
19 did lock the website access of all of her (Ostella’s) websites. Ostella changed the
20 PayPal script for the donation button to reflect her own account on
21 **defendourfreedoms.net** and **redirected** defendourfreedoms.us, the site Taitz was
22 using, to point to a lawsuit by someone named Arnold Beverly and removed
23 Taitz’s accounts from the site. Ostella placed notifications on all her webpages
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1 that the sites were **no** longer Taitz's Defend our Freedom Foundation, Inc. and
2 Ostella posted "**Understanding the Internet 101**" at
3 <http://defendourfreedoms.net/2009/04/12/understanding-the-internet-101.aspx> to
4 ensure people understood Taitz's sites were never "hacked". **It is important to**
5 **note, Ostella's PayPal account was never on the site (blog database) Taitz was**
6 **using, defendourfreedoms.us.**

9 38. Taitz next claims Plaintiffs cause for Harassment, Count 4 fails. Taitz
10 then cites to the criminal statute for harassment, "Ann. Cal. C.C.P. §527.6(b)".
11 [Taitz Motion, pp. 29, ll. 22-28; p. 30, ll. 1-5.] Taitz is incorrect again; this is a
12 civil case and Taitz has continually harassed the Plaintiffs, as recent as May
13 2011. Harassment is defined as: "*a knowing and willful course of conduct directed*
14 *at a specific person that seriously alarms, annoys, torments, or terrorizes the*
15 *person, and that serves no legitimate purpose. The course of conduct must be such*
16 *as would cause a reasonable person to suffer substantial emotional distress, and*
17 *must actually cause substantial emotional distress to the person. See Cal. Civ.*
18 *Code §1708.7(b)(4).* Plaintiffs clearly demonstrated the harassment, cyber-
19 stalking, cyber-harassment, and cyber-bullying by Taitz continued posting,
20 publications, broadcasts, and interviews continually providing Plaintiffs private
21 data; false allegations against Plaintiffs; Taitz seeking third parties to harass the
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1 Plaintiffs; Taitz publication of Liberi's pictures; Taitz false claims of victimization,
2 etc. *See* Plaintiffs Complaint at pp. 72-73, ¶¶ 174-181.

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4 39. Taitz next states that Plaintiffs Counts Five and Six are frivolous and
5 without merit. Counts Five and Six are well explained in Plaintiffs Complaint. *See*
6 Plaintiffs Complaint pp. 75-79, ¶¶ 182-196.

7
8 40. Taitz does not make any mention of Count Three of Plaintiffs
9 Complaint. For the reasons stated herein, Taitz and DOFF's Motion must be
10 Denied. Plaintiffs have clearly pleaded valid claims; however, Plaintiffs do need
11 to amend their complaint, and therefore requests this Court to grant them leave to
12 amend. *Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir.1995).

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15 **IV. TAITZ AND DOFF EXHIBITS VIOLATE THE *FED. R. EVID.***
16 **801(c), 805 AND ARE INADMISSABLE PER *FED. R. EVID.***
17 **802; and CONTAIN UNAUTHENTICATED DOCUMENTS IN**
18 **VIOLATION OF *FED. R. EVID.* 901, 902 and 1005**

19 41. Hearsay is defined as "a statement, other than one made by the
20 declarant offered in evidence to prove the truth of the matter asserted." *See Fed. R.*
21 *Evid.* 801(c). *Fed. R. Evid.* 805 is the Hearsay within Hearsay rule, none of the
22 exceptions apply to Taitz and DOFF's filings. "Hearsay is not admissible except
23 as provided by these rules...". *See Fed. R. Evid.* 802; *See also Bourjaily v. U.S.*,
24 483 U.S. 171, 175, 107 S. Ct. 2775, 97 L. Ed. 2d 144 (1987). Taitz and DOFF's
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1 exhibits attached to their Motion as well as many statements in their Motion are
2 hearsay, double and triple hearsay and therefore are not admissible.

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4 42. Taitz and DOFF's Exhibits filed with their Anti-SLAPP and Motion
5 to Dismiss, filed April 25, 2011, Docket No. 178 include attachments and Exhibits
6 which are unauthenticated in violation of the *Fed. R. Evid.* 901, 902 and 1005.
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8 43. Authenticity of evidence, in the broad sense of the word, is
9 fundamental to litigation and is one of the most basic functions. There are several
10 ways outlined in the *Fed. R. Evid.* regarding the authentication of evidence, none
11 of which Taitz and DOFF complied with. As the Ninth Circuit has held, "The
12 authentication of a document requires 'evidence sufficient to support a finding that
13 the matter in question is what its proponent claims'" *Id.* Quoting *Fed. R. Evid.*
14 901(a). "A document authenticated through personal knowledge must be attached
15 to an affidavit, and the affiant must be a competent "witness who wrote [the
16 document], signed it, and used it, or saw others do so." *Orr v. Bank of Am, NT &*
17 *SA*, 285 F.3d 764, 773 (9th Cir. 2002), *Id* at 773-774 & n. 8 quoting *Fed. R. Evid.*
18 901(b)(1).
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23 44. In particular, Docket No. 178-2 pages 1-8 are "supposed" court
24 records, however, they are **not** certified and **no** one from the Court has attested to
25 the authenticity of the documents and are hearsay, double and triple hearsay
26 documents; Docket No. 178-3 is a "supposed" Court transcript, which is **not** a
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1 complete document, it is **not** certified, and does **not** contain a certification from the
2 Transcriber and therefore is unauthenticated and is hearsay, double and triple
3 hearsay; Docket No. 178-4 pages 1-16 is a statement by Geoff Staples with
4 attached copies of emails which have been altered and forged, illegally inputting
5 Plaintiff Liberi's email address, see Docket No. 146 filed October 7, 2009. Geoff
6 Staples statement and attachments are untruthful, hearsay, double and triple
7 hearsay and therefore are inadmissible; and Docket No. 178-5 is an Affidavit of
8 Linda Belcher which contains untruths, hearsay, double and triple hearsay and
9 therefore, is inadmissible.
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13 45. For these reasons, Taitz and DOFF's Exhibits must be excluded and
14 **not** used by the Court as evidence as they are unauthenticated, hearsay, double and
15 triple hearsay and inadmissible, *Fed. R. Evid.* 802.
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19 **V. CONCLUSION:**

20 46. For the reasons outlined herein, Defendants, Orly Taitz and Defend
21 our Freedoms Foundations, Inc. Anti-SLAPP Motion and Motion to Dismiss must
22 be Denied. In addition, Plaintiffs Request this Court to Grant them Leave to
23 Amend their Complaint.
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28 //

Respectfully submitted,

Dated: May 4, 2011

/s/ Philip J. Berg

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